

EXHIBIT 431

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 IN RE: NATIONAL : MDL No. 2804
5 PRESCRIPTION OPIATE :
6 LITIGATION : Case No. 17-md-2804
7 :
8 APPLIES TO ALL CASES : Judge Dan Aaron Polster
9 :
10 :
11 :

12 HIGHLY CONFIDENTIAL
13 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

14 - - - -

15 DECEMBER 13, 2018

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17 VIDEOTAPED DEPOSITION OF HBC SERVICE COMPANY'S
18 DESIGNATED 30(B)(6) REPRESENTATIVE,
19 JAMES TSIPAKIS,
20 taken pursuant to notice, was held at Marcus & Shapira,
21 One Oxford Center, 35th Floor, Pittsburgh, Pennsylvania
22 15219, by and before Ann Medis, Registered Professional
23 Reporter and Notary Public in and for the Commonwealth
24 of Pennsylvania, on Thursday, December 13, 2018,
25 commencing at 9:09 a.m.

26 - - - -

27 GOLKOW LITIGATION SERVICES
28 877.370.3377 phone | 917.591.5672 fax
29 deps@golkow.com

1 A. I believe it's for our New Kensington,
2 PA location.

3 Q. Store 8 is flagged as having hit their
4 threshold for total hydrocodone products. And he
5 then asked if Mr. Roahrig had checked to see if
6 this is an anomaly or that the order should be
7 considered suspicious; is that correct?

8 A. Yes.

9 Q. And then ultimately he gets a response
10 from Mr. Roahrig?

11 A. Yes. He gets a response, yes.

12 Q. It appears that Mr. Roahrig had been
13 told by a pharmacist that this prescription,
14 although it did contain hydrocodone, it was for
15 what's called Hydrocan liquid, and he gives the
16 explanation that he got from the pharmacist; is
17 that right?

18 A. Yes.

19 Q. Now, we talked before about the daily
20 reports that have thresholds mentioned in them; is
21 that right?

22 A. Yes.

23 (HBC-Tsipakis Exhibit 24 was marked.)

24 BY MR. ROTTINGHAUS:

25 Q. I'm going to give you what we've marked

1 as Exhibit 24 and represent to you that I
2 understand --

3 MR. ROTTINGHAUS: And that's 1055, top
4 right-hand corner, 1055.

5 BY MR. ROTTINGHAUS:

6 Q. We looked at this type of spreadsheet
7 earlier today; is that right?

8 A. Yes.

9 Q. And it's my understanding from looking
10 at this, if you look actually back to the first
11 page, the date of this report is January 31 of
12 2014?

13 A. January 31, 2014?

14 Q. Yes.

15 A. Okay.

16 Q. To the second page, if we look at the
17 spreadsheet, and also referencing --

18 MR. BARNES: I'm not finding that date.
19 I'm seeing December 31 of '13 on the first page.

20 MR. ROTTINGHAUS: I apologize. I may be
21 looking at the wrong.

22 BY MR. ROTTINGHAUS:

23 Q. You do have the January in front of you.
24 This is all one of one exhibit. What number is
25 that?

1 A. 24.

2 MR. ROTTINGHAUS: Let's go off the
3 record for one second.

4 THE VIDEOGRAPHER: 3:52. We are off the
5 video record.

6 (Recess from 3:52 p.m. to 3:56 p.m.)

7 THE VIDEOGRAPHER: 3:56. We are on the
8 video record.

9 BY MR. ROTTINGHAUS:

10 Q. We just clarified what we're looking at
11 here. So that the record is clear, I'm going to
12 be referring you to what I understand to be
13 end-of-the-month reports for several months,
14 including January of 2014, December of 2013,
15 November of 2013, October of 2013, and then
16 although it will look out of order, one from May
17 of 2014. Okay?

18 A. Yes.

19 Q. Going back to the January 2014, page
20 1055 at the top right, second page of that appears
21 to be a spreadsheet like we talked about before?

22 A. Yes.

23 Q. Does that look familiar to you?

24 A. Yes.

25 Q. Again, I think you said before, that

1 this looked a little different than you've ever
2 seen it before, the information; is that right?

3 A. I was used to seeing it in this format,
4 and the multiple pages threw me this morning.

5 Q. Does it look somewhat more familiar to
6 you now?

7 A. Yes.

8 Q. I was going to ask you, to your
9 knowledge, is there someone at HBC who would have
10 the most knowledge about how this spreadsheet was
11 designed and how it was operated between 2009 and
12 2014?

13 A. I don't know.

14 Q. Would it be a system at Giant Eagle or
15 would it have been a system designed by someone at
16 HBC?

17 A. Probably within the IT department at
18 corporate.

19 Q. At Giant Eagle?

20 A. Yes.

21 Q. Going back to the email we were just
22 discussing, I think Exhibit 23, from Mr. Roahrig
23 to Mr. Millward, Mr. Roahrig is referring to the
24 Hydrocan liquid and trying to address the concern
25 that was raised about store number 8; is that

1 right?

2 A. Yes.

3 Q. And this is in January of 2014?

4 A. Yes.

5 Q. If we go back to Exhibit 24 and if we
6 look four lines down, we'll see store number 8 or
7 pharmacy number 8.

8 A. Yes.

9 Q. Looking at this, would it be your
10 understanding that Mr. Roahrig and Mr. Millward
11 were having a discussion about this specific store
12 that we see, store number 8?

13 A. It references store 8 and I'm reading
14 store 8 on this. I'm not sure which report
15 they're looking at or which line item or what
16 order they're looking at.

17 Q. Well, to back up, the email was
18 referenced on January 10th of 2014, and it was
19 started that morning it looks like, maybe even on
20 January 9. But it's referencing store number 8.

21 A. Yes.

22 Q. And if we are correct that this
23 spreadsheet is referencing all of the products
24 that exceeded thresholds for January of 2014, we
25 would see store number 8 did indeed exceed its

1 threshold showing the total quantity shipped of
2 8514 with the threshold quantity being 6868.

3 A. Yes.

4 Q. You said before that you thought -- and
5 this again appears to have a chain-wide average
6 for the threshold quantity.

7 A. Yes.

8 Q. You said before that you thought using a
9 chain-wide average could lead to false positives?

10 A. For sure, yes.

11 Q. And by the same token, could using a
12 chain-wide average also lead to false negatives?

13 A. I'm not a mathematician, but I believe
14 looking here at store 8 that you're asking on,
15 that's one of our busiest stores in the chain, and
16 I'm not surprised that it would have been over
17 threshold from looking at this number.

18 Q. My question is a little different,
19 however. Not looking just at store number 8 and
20 not looking at just at the information on this
21 spreadsheet, would you agree that while using a
22 chain-wide threshold can lead to false positives
23 for some stores, could it also lead to false
24 negatives or a sense of reassurance for some
25 stores that may actually be using or ordering a

1 lot more of a hydrocodone product than it normally
2 would?

3 A. It's possible.

4 Q. If we go to the next document in this
5 set, 1054, this is the end-of-the-month report for
6 December 2013. If you'll go to the page with the
7 spreadsheet information on it, we see store number
8 8 again; is that right?

9 A. Yes.

10 Q. I think it's about four stores down.
11 Are you with me?

12 A. Yes.

13 Q. And for store number 8 this month, we
14 see a total shipped quantity of 14,663?

15 A. Yes.

16 Q. And a threshold quantity of 7175?

17 A. Yes.

18 Q. And if you do the math, correct me if
19 you think I'm wrong, but that appears to be a
20 little over six times the monthly average?

21 A. Based on this threshold, yes.

22 Q. Would you expect a daily or a report
23 like this to raise questions about store number 8
24 similar to the questions that were raised in
25 January of 2014?

1 A. Yes.

2 Q. In getting ready for this deposition and
3 looking through the documents you looked through
4 and in speaking to the individuals you told us you
5 have spoken to, did you become aware of anyone
6 raising any concerns about store number 8 and the
7 amount of shipments to store number 8 in December
8 of 2013?

9 A. Not specifically, no.

10 Q. Do you have all of the exhibits in front
11 of you still?

12 A. Yes.

13 Q. Could you go back to Exhibit No. 12,
14 which is the suspicious order monitor policy.

15 MR. BARNES: Are we done with this?

16 MR. ROTTINGHAUS: We may go back to it,
17 so keep it handy.

18 BY MR. ROTTINGHAUS:

19 Q. Specifically page referenced under 12.1.

20 MR. BARNES: Exhibit 12? It says 12,
21 then 12.2. You said 12.1?

22 MR. ROTTINGHAUS: Forgive me. It's 12,
23 just 12. I apologize.

24 BY MR. ROTTINGHAUS:

25 Q. So we're again looking back now at the

1 inventory control suspicious order policy that was
2 enacted back in August of 2014?

3 A. Yes.

4 Q. I see a name there, the policy owner
5 being Matt Rogos?

6 A. Yes.

7 Q. Do you know that person?

8 A. I do not.

9 Q. Do you know whether Mr. Rogos indeed
10 worked for HBC back in 2014?

11 A. I do not, no.

12 Q. Do you know whether he currently works
13 for Giant Eagle?

14 A. I do not.

15 Q. Did you have an opportunity to try to
16 speak with Mr. Rogos to find out about his
17 knowledge concerning this policy?

18 A. Are you asking me if I tried to reach
19 out to Mr. Rogos?

20 Q. Yes.

21 A. No.

22 Q. Stay on that page with me, but go down
23 towards the bottom under Procedures. You'll see
24 some bullet points.

25 A. Yes.

1 Q. Go down to the second bullet point, and
2 I'm going to read it, and tell me if I'm reading
3 it incorrectly. Okay?

4 A. Yes.

5 Q. It appears to me the second bullet point
6 states that "Suspicious order criteria include,
7 but are not limited to, purchases over a defined
8 period that exceed a predetermined threshold."

9 Did I read that correctly?

10 A. You did.

11 Q. At least if we read that portion of this
12 policy, Exhibit 12, and we apply it to the
13 spreadsheet that we were just looking at for
14 December of 2013, does it appear to you that any
15 amount shipped in excess of the threshold quantity
16 should at least raise a question in someone's mind
17 as to whether there indeed is a suspicious order?

18 A. Yes.

19 Q. Are you able to sitting here today tell
20 us whether anybody raised any questions or raised
21 any red flags about the December 2013 order by
22 store number 8 or the shipment to store number 8
23 that month and whether it indeed was a suspicious
24 order?

25 A. I can't tie back specifically to that,

1 but certainly we just discussed a conversation
2 with the field ops. and corporate regarding store
3 8.

4 Q. We did, and that was actually the month
5 after December 2013, January 2014.

6 A. Yes.

7 Q. And at least in January of 2014, someone
8 wanted to look into the ordering pattern of store
9 number 8 to find out whether this indeed was a
10 suspicious order for January of 2014?

11 A. Yes.

12 Q. But going back to 2013, at least sitting
13 here today, you're not aware of anyone questioning
14 the order by store number 8 in December 2013?

15 A. I don't have anything in front of me
16 that there was or wasn't; correct.

17 Q. Have you seen any documents or any
18 emails by anyone concerning any questions about
19 the orders by store number 8 in December of 2013?

20 A. I did not.

21 Q. If you go to page 1053, I'll represent
22 to you that this appears to be an end-of-the-month
23 report for November 2013 dated specifically 30
24 November 2013. Are you with me?

25 A. For November 2013?

1 Q. Yes.

2 A. Yes.

3 Q. If you'll go to the spreadsheet, please.

4 And if you go down to store number 8, which I
5 believe is the fourth store from the bottom, and
6 if you look at the amount shipped in November of
7 2013 to store 8, it appears to be 12,298?

8 A. Yes.

9 Q. With a threshold quantity being 7257?

10 A. Yes.

11 Q. And correct me if you think I'm wrong,
12 but by my math, that's five times the monthly
13 average?

14 A. Yes.

15 Q. And knowing what you've told us about
16 your understanding of the store looking into any
17 orders that it thinks should be of concern, would
18 you have expected HBC or someone at HBC to have
19 investigated the amount shipped for the
20 hydrocodone product to store number 8 in that
21 month?

22 A. I would have expected someone to look at
23 at each line item on the report or daily
24 throughout the month on this report and do their
25 due diligence on each of these line items, yes.